



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 231

WEDNESDAY, FEBRUARY 3, 2010

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adkins

AN ACT relating to psychiatric residential treatment facilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 216B.450 is amended to read as follows:

As used in this section,~~and~~ KRS 216B.455, ***and Section 3 of this Act:***

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Community-based" means a facility that is located in an existing residential neighborhood or community;
- (3) "Freestanding" means a completely detached building or two (2) residences under one (1) roof that are clearly separate and can serve youth independently;
- (4) "Home-like" means a residence with living space designed to accommodate the daily living needs and tasks of a family unit, with opportunity for adult-child communication, shared tasks, adult-child learning, congregate meals, and family-type routines appropriate to the ages and levels of functioning of the residents;~~and~~
- (5) "Psychiatric residential treatment facility" means ***either*** a licensed:

(a) Level I;~~and~~ community-based, and home-like facility with a maximum of nine (9) beds which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) years who have an emotional disability or severe emotional disability as defined in KRS 200.503, with an age range of no greater than five (5) years at the time of admission in a living unit; ***or***

(b) Level II home-like facility that provides twenty-four (24) hour inpatient psychiatric residential treatment and habitation to persons who:

- 1. Are ages four (4) to twenty-one (21) years, with an age range of no greater than five (5) years at the time of admission to the facility;***
- 2. Have a severe emotional disability as defined by KRS 200.503 in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or developmental disability;***
and

1 3. Do not meet the medical necessity criteria for an acute care hospital or
 2 a psychiatric hospital and whose treatment needs cannot be met in an
 3 ambulatory care setting, Level I psychiatric residential treatment
 4 facility, or other less restrictive environment;

5 (6) "Qualified mental health personnel" means a staff member who operates under
 6 the supervision of a qualified mental health professional; and

7 (7) "Qualified mental health professional" has the same meaning as in KRS
 8 202A.011.

9 ➔Section 2. KRS 216B.455 is amended to read as follows:

- 10 (1) A certificate of need shall be required for all Level I psychiatric residential
 11 treatment facilities. The application for a certificate of need shall include formal
 12 written agreements of cooperation that identify the nature and extent of the
 13 proposed working relationship between the proposed Level I psychiatric residential
 14 treatment facility and each of the following agencies, organizations, or facilities
 15 located in the service area of the proposed facility:
- 16 (a) Regional interagency council for children with emotional disability or severe
 - 17 emotional disability as defined in KRS 200.509;
 - 18 (b) Department for Community Based Services;
 - 19 (c) Local school districts;
 - 20 (d) At least one (1) psychiatric hospital; and
 - 21 (e) Any other agency, organization, or facility deemed appropriate by the cabinet.
- 22 (2) Notwithstanding provisions for granting of a nonsubstantive review of a certificate
 23 of need application under KRS 216B.095, the cabinet shall review and approve the
 24 nonsubstantive review of an application seeking to increase the number of beds as
 25 permitted by KRS 216B.450 if the application is submitted by an eight (8) bed or
 26 sixteen (16) bed Level I psychiatric residential treatment facility licensed and
 27 operating or holding an approved certificate of need on July 13, 2004. The cabinet

1 shall base its approval of expanded beds upon the Level I psychiatric residential
 2 treatment facility's ability to meet standards designed by the cabinet to provide
 3 stability of care. The standards shall be promulgated by the cabinet in an
 4 administrative regulation in accordance with KRS Chapter 13A. An application
 5 under this subsection shall not be subject to any moratorium relating to certificate of
 6 need.

7 (3) All Level I psychiatric residential treatment facilities shall comply with the
 8 licensure requirements as set forth in KRS 216B.105.

9 (4) All Level I psychiatric residential treatment facilities shall be certified by the Joint
 10 Commission on Accreditation of Healthcare Organizations, or the Council on
 11 Accreditation of Services for Families and Children, or any other accrediting body
 12 with comparable standards that is recognized by the state.

13 (5) A Level I psychiatric residential treatment facility shall not be located in or on the
 14 grounds of a psychiatric hospital. More than one (1) freestanding Level I psychiatric
 15 residential treatment facility may be located on the same campus that is not in or on
 16 the grounds of a psychiatric hospital.

17 (6) The total number of Level I psychiatric residential treatment facility beds shall not
 18 exceed three hundred and fifteen (315) beds statewide~~], and shall be distributed~~
 19 ~~among the state mental hospital districts established by administrative regulations~~
 20 ~~promulgated by the Cabinet for Health and Family Services under KRS 210.300 as~~
 21 ~~follows:~~

22 ~~(a) — District I for seventy two (72) beds;~~

23 ~~(b) — District II for ninety nine (99) beds;~~

24 ~~(c) — District III for ninety (90) beds; and~~

25 ~~(d) — District IV for fifty four (54) beds].~~

26 (7) (a) The Cabinet for Health and Family Services shall investigate the need for
 27 specialty foster care and posttreatment services for persons discharged

1 ~~from~~ ~~children's~~ Level I and Level II psychiatric residential treatment
 2 facilities ~~services for specialized populations including, but not limited to,~~
 3 ~~sexual offenders, children with physical and developmental disabilities, and~~
 4 ~~children with dual diagnoses~~].

5 (b) The cabinet shall report to the Governor and the Legislative Research
 6 Commission by August 1, 2011~~2005~~, detailed information on specialty
 7 foster care and posttreatment services for persons discharged from Level I
 8 and Level II psychiatric residential treatment facilities ~~on a plan to enable~~
 9 ~~children with specialized needs to be served in community-based psychiatric~~
 10 ~~treatment facilities in Kentucky. The plan shall include methods to:~~

- 11 1. ~~Identify the specialized populations;~~
- 12 2. ~~Develop services targeted for the specialized populations; and~~
- 13 3. ~~Establish a Medicaid reimbursement rate for specialized facilities in~~
 14 ~~Kentucky~~].

15 ➔SECTION 3. A NEW SECTION OF KRS 216B.450 TO 216B.459 IS
 16 CREATED TO READ AS FOLLOWS:

17 (1) A certificate of need shall be required for all Level II psychiatric residential
 18 treatment facilities. The need criteria for the establishment of Level II psychiatric
 19 residential treatment facilities shall be in the state health plan.

20 (2) An application for a certificate of need for Level II psychiatric residential
 21 treatment facilities shall not exceed fifty (50) beds. Level II facility beds may be
 22 located in a separate part of a psychiatric hospital, a separate part of an acute
 23 care hospital, or a Level I psychiatric residential treatment facility if the Level II
 24 beds are located on a separate floor, in a separate wing, or in a separate building.
 25 A Level II facility shall not refuse to admit a patient who meets the medical
 26 necessity criteria and facility criteria for Level II facility services. Nothing in this
 27 section, and Sections 1 and 2 of this Act shall be interpreted to prevent a

1 psychiatric residential treatment facility from operating both a Level I psychiatric
 2 residential treatment facility and a Level II psychiatric residential treatment
 3 facility.

4 (3) The application for a Level II psychiatric residential treatment facility certificate
 5 of need shall include formal written agreements of cooperation that identify the
 6 nature and extent of the proposed working relationship between the proposed
 7 Level II psychiatric residential treatment facility and each of the following
 8 agencies, organizations, or entities located in the service area of the proposed
 9 facility:

10 (a) Regional interagency council for children with emotional disability or
 11 severe emotional disability created under KRS 200.509;

12 (b) Community mental health-mental retardation board established under KRS
 13 210.380;

14 (c) Department for Community Based Services;

15 (d) Local school districts;

16 (e) At least one (1) psychiatric hospital; and

17 (f) Any other agency, organization, or entity deemed appropriate by the
 18 cabinet.

19 (4) The application for a certificate of need shall include:

20 (a) The specific number of beds proposed for each age group and the specific,
 21 specialized program to be offered;

22 (b) An inventory of current services in the proposed service area; and

23 (c) Clear admission and discharge criteria including age, sex, and other
 24 limitations.

25 (5) All Level II psychiatric residential treatment facilities shall comply with the
 26 licensure requirements as set forth in KRS 216B.105.

27 (6) All Level II psychiatric residential treatment facilities shall be certified by the

Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards that are recognized by the Centers for Medicare and Medicaid Services.

(7) A Level II psychiatric residential treatment facility shall be under the clinical supervision of a qualified mental health professional, with training or experience in mental health treatment of children and youth.

(8) Treatment services shall be provided by qualified mental health professionals or qualified mental health personnel. Individual staff who will provide educational programs shall meet the employment standards outlined by the Kentucky Board of Education and the Education Professional Standards Board.

(9) A Level II psychiatric residential treatment facility shall meet the following requirements with regard to professional staff:

(a) A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;

(b) If a Level II psychiatric residential treatment facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist; and

(c) The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly.

(10) A Level II psychiatric residential treatment facility shall:

(a) Prepare a written staffing plan that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria. The written staffing plan shall include but not be limited to the following:

1 1. Specification of the direct care staffing per patient ratio that the
 2 facility shall adhere to during waking hours and during sleeping
 3 hours;

4 2. Delineation of the number of direct care staff per patient, including
 5 the types of staff and the mix and qualifications of qualified mental
 6 health professionals and qualified mental health personnel, that shall
 7 provide direct care and will comprise the facility's per patient staffing
 8 ratio;

9 3. Specification of appropriate qualifications for individuals included in
 10 the per patient staffing ratio by job description, education, training,
 11 and experience;

12 4. Provision for ensuring compliance with its written staffing plan, and
 13 specification of the circumstances under which the facility may deviate
 14 from the per patient staffing ratio due to patient emergencies, changes
 15 in patient acuity, or changes in patient census; and

16 5. Provision for submission of the written staffing plan to the cabinet for
 17 approval as part of the facility's application for initial licensure.

18 No initial license to operate as a Level II psychiatric residential treatment
 19 facility shall be granted until the cabinet has approved the facility's written
 20 staffing plan. Once a facility is licensed, it shall comply with its approved
 21 written staffing plan and, if the facility desires to change its approved per
 22 patient staffing ratio, it shall submit a revised plan and have the plan
 23 approved by the cabinet prior to implementation of the change;

24 (b) Require full-time professional and direct care staff to meet the continuing
 25 education requirements of their profession or be provided with forty (40)
 26 hours per year of in-service training; and

27 (c) Develop and implement a training plan for all staff that includes but is not

1 limited to the following:

2 1. Behavior management procedures and techniques;

3 2. Physical management procedures and techniques;

4 3. First aid;

5 4. Cardiopulmonary resuscitation;

6 5. Infection control procedures;

7 6. Child and adolescent growth and development;

8 7. Training specific to the specialized nature of the facility;

9 8. Emergency and safety procedures; and

10 9. Detection and reporting of child abuse and neglect.

11 (11) A Level II psychiatric residential treatment facility shall require a criminal
 12 records check to be completed on all employees and volunteers. The employment
 13 or volunteer services of an individual shall be governed by KRS 17.165, with
 14 regard to a criminal records check. A new criminal records check shall be
 15 completed at least every two (2) years on each employee or volunteer.

16 (12) (a) Any employee or volunteer who has committed or is charged with the
 17 commission of a violent offense as specified in KRS 439.3401, a sex crime
 18 specified in KRS 17.500, or a criminal offense against a victim who is a
 19 minor as specified in KRS 17.500 shall be immediately removed from
 20 contact with a child within the residential treatment center until the
 21 employee or volunteer is cleared of the charge.

22 (b) An employee or volunteer under indictment, legally charged with felonious
 23 conduct, or subject to a cabinet investigation shall be immediately removed
 24 from contact with a child.

25 (c) The employee or volunteer shall not be allowed to work with the child until
 26 a prevention plan has been written and approved by the cabinet, the person
 27 is cleared of the charge, or a cabinet investigation reveals an

1 unsubstantiated finding, if the charge resulted from an allegation of child
 2 abuse, neglect, or exploitation.

3 (d) Each employee or volunteer shall submit to a check of the central registry.

4 An individual listed on the central registry shall not be a volunteer at or be
 5 employed by a Level II psychiatric residential treatment facility.

6 (e) Any employee or volunteer removed from contact with a child, pursuant to
 7 paragraph (12) of this section, may, at the discretion of the employer, be
 8 terminated, reassigned to a position involving no contact with a child, or
 9 placed on administrative leave with pay during the pendency of the
 10 investigation or proceeding.

11 (13) An initial treatment plan of care shall be developed and implemented for each
 12 resident, and the plan of care shall be based on initial history and ongoing
 13 assessment of the resident's needs and strengths, with an emphasis on active
 14 treatment, transition planning, and after care services, and shall be completed
 15 within seventy-two (72) hours of admission.

16 (14) A comprehensive treatment plan of care shall be developed and implemented for
 17 each resident, and the plan of care shall be based on initial history and ongoing
 18 assessment of the resident's needs and strengths, with an emphasis on active
 19 treatment, transition planning, and after care services, and shall be completed
 20 within ten (10) calendar days of admission.

21 (15) A review of the treatment plan of care shall occur at least every thirty (30) days
 22 following the first ten (10) days of treatment and shall include the following
 23 documentation:

24 (a) Dated signatures of appropriate staff, parent, guardian, legal custodian or
 25 conservator;

26 (b) An assessment of progress toward each treatment goal and objective with
 27 revisions as indicated; and

1 (c) A statement of justification for the level of services needed, including
 2 suitability for treatment in a less-restrictive environment and continued
 3 services.

4 (16) A Level II psychiatric residential treatment facility shall provide or arrange for
 5 the provision of qualified dental, medical, nursing, and pharmaceutical care for
 6 residents. The resident's parent, guardian, legal custodian, or conservator may
 7 choose a professional for nonemergency services.

8 (17) A Level II psychiatric residential treatment facility shall ensure that opportunities
 9 are provided for recreational activities that are appropriate and adapted to the
 10 needs, interests, and ages of the residents.

11 (18) A Level II psychiatric residential treatment facility shall assist residents in the
 12 independent exercise of health, hygiene, and grooming practices.

13 (19) A Level II psychiatric residential treatment facility shall assist each resident in
 14 securing an adequate allowance of personally owned, individualized, clean, and
 15 seasonal clothes that are the correct size.

16 (20) A Level II psychiatric residential treatment facility shall assist, educate, and
 17 encourage each resident in the use of dental, physical, or prosthetic appliances or
 18 devices and visual or hearing aids.

19 (21) The cabinet shall promulgate administrative regulations that include but are not
 20 limited to the following:

21 (a) Establishing requirements for tuberculosis skin testing for staff of a Level
 22 II psychiatric residential treatment facility;

23 (b) Ensuring that accurate, timely, and complete resident assessments are
 24 conducted for each resident of a Level II psychiatric residential treatment
 25 facility;

26 (c) Ensuring that accurate, timely, and complete documentation of the
 27 implementation of a resident's treatment plan of care occurs for each

1 resident of a Level II psychiatric residential treatment facility;

2 (d) Ensuring that an accurate, timely, and complete individual record is
 3 maintained for each resident of a Level II psychiatric residential treatment
 4 facility;

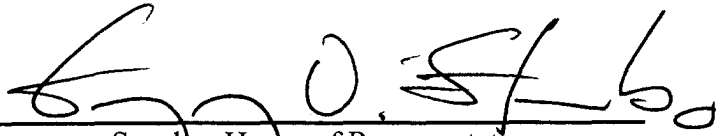
5 (e) Ensuring that an accurate, timely, and complete physical examination is
 6 conducted for each resident of a Level II psychiatric residential treatment
 7 facility;

8 (f) Ensuring accurate, timely, and complete access to emergency services is
 9 available for each resident of a Level II psychiatric residential treatment
 10 facility; and


11 (g) Ensuring that there is accurate, timely, and complete administration of
 12 medications for each resident of a Level II psychiatric residential treatment
 13 facility.

14 (22) The cabinet shall, within ninety (90) days of the effective date of this Act,
 15 promulgate administrative regulations in accordance with KRS Chapter 13A to
 16 implement this section and Sections 1 and 2 of this Act. When promulgating the
 17 administrative regulations, the cabinet shall not consider only staffing ratios
 18 when evaluating the written staffing plan of an applicant but shall consider the
 19 applicant's overall ability to provide for the needs of patients.

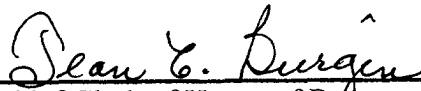
20 (23) The cabinet shall report, no later than August 1 of each year, to the Interim Joint
 21 Committee on Health and Welfare regarding the implementation of this section
 22 and Sections 1 and 2 of this Act. The report shall include but not be limited to
 23 information relating to resident outcomes, such as lengths of stay in the facility,
 24 locations residents were discharged to, and whether residents were readmitted to
 25 a Level II psychiatric residential treatment facility within a twelve (12) month
 26 period.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date March 4, 2010